

ORDER NO. 6423

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Mark Acton, Vice Chairman;
Ann C. Fisher;
Ashley E. Poling; and
Robert G. Taub

Permanent Addition of USPS Connect Local Mail
Price Category to the Market Dominant Product List

Docket No. MC2023-12

ORDER DISMISSING WITHOUT PREJUDICE
THE POSTAL SERVICE'S REVISED REQUEST TO CONVERT
USPS CONNECT LOCAL MAIL MARKET TEST TO A PERMANENT OFFERING

(Issued January 20, 2023)

I. INTRODUCTION

On October 11, 2022, the Postal Service filed a request with the Commission pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3045.18 to convert the experimental product offering USPS Connect Local Mail into a permanent product offering on the Mail Classification Schedule (MCS).¹ On October 17, 2022, the Commission dismissed the

¹ United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 11, 2022 (Request).

Request without prejudice for procedural reasons, allowing the Postal Service to file an amended request if it so chose.²

On November 9, 2022, the Postal Service filed a revised request pursuant to 39 U.S.C. § 3642, 39 C.F.R. part 3040, subpart B, and 39 C.F.R. § 3045.18 to convert USPS Connect Local Mail into a permanent product.³ In support of its Revised Request, the Postal Service filed the following documents:

- Attachment A to Request—Proposed Changes to the Mail Classification Schedule;
- Attachment B to Request—Market Test Quarterly Data Collection Reports;
- Attachment C to Request—Resolution of the Governors of the United States Postal Service; and
- Attachment D to Request—Statement of Supporting Justification

See Revised Request, Attachments A-D.

The USPS Connect Local Mail market test was initially authorized by the Commission on January 4, 2022.⁴ It is currently set to expire on January 8, 2024. Order No. 6080 at 20. USPS Connect Local Mail is a derivative of First-Class Mail that functions as an alternative to long-distance, end-to-end mailing for use by business mailers who wish to send mail locally with regular frequency. *Id.* at 2. The Postal Service asserts that the USPS Connect Local Mail market test has proven successful and that it now wishes to insert the USPS Connect Local Mail product offering into the Mail Classification Schedule under section 1115 (Market Dominant Products: First-Class Mail: First-Class Mail Flats). Revised Request at 2. The Postal Service maintains that the USPS Connect Local Mail product meets all the conditions in

² Order Dismissing Without Prejudice Postal Service's Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, October 17, 2022, at 5-6 (Order No. 6301).

³ United States Postal Service Revised Request to Convert USPS Connect Local Mail to a Permanent Offering, November 9, 2022 (Revised Request).

⁴ Docket No. MT2022-1, Order Authorizing Market Test of Experimental Product – USPS Connect Local Mail, January 4, 2022 (Order No. 6080).

39 U.S.C. § 3642 and 39 C.F.R. § 3045.18 for adding a non-experimental product based on an experimental product to the product list. *Id.* at 3-6. The Postal Service also, as required by 39 C.F.R. § 3045.18(e), filed a separate notice of the instant request in Docket No. MT2022-1.⁵ The planned rate for USPS Connect Local Mail is \$2.95. Revised Request at 2-3.

On November 14, 2022, the Commission issued Order No. 6326, which reopened the current docket, appointed a public representative, and requested interested persons to submit comments.⁶ In addition, two sets of Chairman's Information Requests were issued, to which the Postal Service filed timely responses.⁷ Individual responses will be discussed in detail where relevant below.

After reviewing the record and argument in this docket, the Commission dismisses the Revised Request without prejudice. As explained in detail below, during the course of proceedings, commenters raised significant issues concerning whether the conversion of USPS Connect Local Mail, as currently proposed, would violate 39 U.S.C. § 404a. The Postal Service did not satisfactorily assuage these concerns in the Revised Request.

⁵ Docket No. MT2022-1, United States Postal Service Notice of Revised Request to Convert USPS Connect Local Mail to Permanent Offering, November 9, 2022.

⁶ Notice and Order Concerning Revised Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, November 14, 2022, at 3 (Order No. 6326).

⁷ See Chairman's Information Request No. 1 and Notice of Filing Under Seal, November 28, 2022; Chairman's Information Request No. 2, December 16, 2022; Response of the United States Postal Service to Chairman's Information Request No. 1, December 5, 2022 (Response to CHIR No. 1); Response of the United States Postal Service to Chairman's Information Request No. 2, December 23, 2022 (Response to CHIR No. 2).

II. COMMENTS

Six initial sets of comments were filed with the Commission.⁸ The Public Representative states that she supports the Postal Service's request to convert USPS Connect Local Mail to a permanent product. PR Comments at 1. The Public Representative asserts that the Revised Request complies with 39 U.S.C. § 3642 in that the Postal Service correctly classifies USPS Connect Local Mail as a Market Dominant product that is distinct from private sector offerings, is supported by customers, and will have a positive impact on small businesses. *Id.* at 4-7. She also notes that the Revised Request complies with the procedural requirements necessary for an experimental price category to become a permanent price category. *Id.* at 7-11.

On the other hand, the other five initial commenters argue that the Commission should not approve the Revised Request.⁹ First, these commenters assert that the request to convert USPS Connect Local Mail is premature in that there is still a year left on its market test and that extra testing would be beneficial. *See, e.g.,* PostCom Comments at 1-2; PSA Comments at 3. For instance, PostCom notes that "the Postal Service needs to compile additional data on usage before it can make reasonable estimates of future performance for" USPS Connect Local Mail, particularly regarding the offering's cost coverage. PostCom Comments at 2.

⁸ Comments of the National Association of Presort Mailers, December 9, 2022; Comments of the National Postal Policy Council, December 9, 2022; Comments of the Package Shippers Association, December 9, 2022 (PSA Comments); Comments of the Association for Postal Commerce, December 9, 2022 (PostCom Comments); Comments of Pitney Bowes Inc., December 9, 2022 (Pitney Bowes Comments); Public Representative Comments on Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, December 9, 2022 (PR Comments).

⁹ These commenters are the National Association of Presort Mailers (NAPM), National Postal Policy Council, the Package Shippers Association (PSA), the Association for Postal Commerce (PostCom), and Pitney Bowes Inc. (Pitney Bowes).

Additionally, several commenters assert that because the Postal Service proposes to offer USPS Connect Local Mail solely through its own Click-N-Ship and application programming interface (API)—thus precluding other postage evidencing options—the Request runs afoul of 39 U.S.C. § 404a, which prohibits the Postal Service from establishing a standard that unfairly precludes competition.¹⁰ In response, the Postal Service filed reply comments, asserting that its Revised Request does not violate section 404a.¹¹ Pitney Bowes subsequently filed a surreply addressing the Postal Service’s arguments.¹² As the issue of section 404a compliance forms the bulk of the rationale for denying the Revised Request, comments thereon will be discussed as relevant in the legal analysis section below.

¹⁰ See, e.g., Pitney Bowes Comments at 7-11; PostCom Comments at 3; PSA Comments at 1-3.

¹¹ Reply Comments of the United States Postal Service, December 23, 2022, at 1-2 (Reply Comments). The Commission did not establish a reply comment deadline for this matter and notes that the Postal Service did not file an accompanying motion requesting that the Commission accept the Reply Comments, which were filed after the comment deadline. Nevertheless, the Commission will consider the Reply Comments because they provide helpful context to the section 404a issue. No party lodged any objection to this Postal Service filing and the Commission finds that accepting and considering this filing would not prejudice any party. The Commission reminds interested parties that, should they file a document after the established deadline, they must file a motion, prior to (or concurrent with) the document, requesting that the Commission consider it. 39 C.F.R. § 3010.163.

¹² Surreply Comments of Pitney Bowes Inc., December 27, 2022 (Pitney Bowes Surreply). Concurrently, Pitney Bowes filed a motion for leave requesting that the Commission accept its surreply. Motion of Pitney Bowes Inc. for Leave to File Surreply, December 27, 2022 (Motion for Leave). Because the Pitney Bowes Surreply is limited to responding to issues raised in the Reply Comments and no party has objected to the Pitney Bowes filing, the Commission finds that accepting and considering this filing would not prejudice any party. Therefore, the Commission grants the Motion for Leave.

III. ANALYSIS

A. Whether the Conversion of USPS Connect Local Mail to a Permanent Price Category Violates Section 404a

Section 404a, in relevant part, prohibits the Postal Service from “establish[ing] any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service.” 39 U.S.C. § 404a(a)(1). The initial burden of demonstrating that conduct “preclude[s] competition” or “establish[es] the terms of competition” is on the party challenging the Postal Service’s action.¹³ After that initial showing is made, the burden shifts to the Postal Service to demonstrate that its conduct “does not create an unfair competitive advantage.” Order No. 1739 at 8.

As explained in detail below, the commenters have raised meaningful issues with the provision of USPS Connect Local Mail that suggest that section 404a may be violated if USPS Connect Local Mail is made a permanent price category under the current terms. These contentions have not been sufficiently refuted by the Postal Service.

1. Does USPS Connect Local Mail “establish [a] rule or regulation”?

Section 404a governs “any rule or regulation (including any standard)” promulgated by the Postal Service. 39 U.S.C. § 404a(a)(1). In the analogous context of complaints brought under 39 U.S.C. § 3662 regarding an alleged violation of section 404a, the Commission has determined that “the term *rule, regulation, or standard* includes, among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.” 39 C.F.R.

¹³ Docket No. RM2013-4, Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a, June 5, 2013, at 7 (Order No. 1739).

§ 3024.5(c). The Commission explained that this provision serves as a “catch-all,” noting that “[i]t would be inappropriate for the Postal Service to be able to avoid violations of 39 U.S.C. 404a by merely titling its governmental policies as ‘manuals’ or ‘operating procedures’ as opposed to ‘regulations’ or ‘standards.’” Order No. 1739 at 8.

In its comments, Pitney Bowes asserts that the Postal Service is establishing a “rule or regulation” because, on October 20, 2022, it published a final rule on USPS Connect Local Mail amending the Mailing Standards of the United States Postal Service, Domestic Mail Manual in the *Federal Register*.¹⁴ It also notes that the Domestic Mail Manual is incorporated by reference into the Code of Federal Regulations. Pitney Bowes Comments at 7 (citing 39 C.F.R. §§ 111.1, 111.3). Thus, according to Pitney Bowes, the first element of a section 404a violation is satisfied. The Postal Service does not provide any meaningful refutation of this argument.¹⁵ The Commission takes notice of the fact that the Domestic Mail Manual is among the Postal Service’s regulations. 39 C.F.R. § 211.2(a)(2). At this juncture, the Commission agrees that it cannot be reasonably disputed that the Postal Service’s Revised Request would “establish [a] rule or regulation” for purposes of section 404a.

2. Does USPS Connect Local Mail “preclude competition or establish the terms of competition”?

As explained above, section 404a prohibits the Postal Service from establishing a rule that has the effect of precluding competition or establishing the terms of competition. 39 U.S.C. § 404a(a)(1). According to the commenters, the manner in which the Postal Service intends to offer USPS Connect Local Mail will effectively preclude competition for postage evidencing services.¹⁶ A “postage evidencing system”

¹⁴ Pitney Bowes Comments at 7 (citing USPS Connect Local Mail, 87 Fed. Reg. 63,696 (Oct. 20, 2022) (to be codified at 39 C.F.R. pt. 111)).

¹⁵ See Reply Comments at 1-2 (identifying two other explanations as the “reasons” that claims of a violation of section 404a “must fail”).

¹⁶ See, e.g., Pitney Bowes Comments at 7-8; PostCom Comments at 3; PSA Comments at 2.

is a “device or system of components that a customer uses to generate and print evidence that postage required for mailing has been paid.” 39 C.F.R. § 501.1(a). The Postal Service allows private companies to provide postage evidencing services to mailers, subject to strict regulation. *See, e.g., id.* §§ 501.2 *et seq.* According to Pitney Bowes, postage evidencing services offered by private companies “make mail more valuable and access to postal services more secure and cost efficient, benefiting the Postal Service, small and medium-sized businesses, and their end customers.” Pitney Bowes Comments at 3. Further, it asserts that “[c]ompanies like Pitney Bowes compete not only with other private companies offering postage evidencing solutions, but also with the Postal Service’s own competitive offerings, specifically, the Postal Service’s Click-N-Ship solution or the USPS API.” *Id.*

As pointed out by multiple commenters, the Postal Service normally allows retail First-Class Mail postage to be paid through competitive postage evidencing providers as well as through its own systems. *See, e.g., id.* at 3-4. In the case of USPS Connect Local Mail, however, the Postal Service has restricted payment to its own Click-N-Ship solution and USPS API throughout the market test and intends to continue doing so if the price category becomes permanent.¹⁷ According to the commenters, by restricting payment options for USPS Connect Local Mail to those provided by the Postal Service itself, the Postal Service is precluding competition in the postage evidencing sphere.¹⁸

The Postal Service disagrees. According to the Postal Service, private postage evidencing providers are not competitors with the Postal Service for purposes of section 404a. Reply Comments at 1-4. The Postal Service reasons that postage evidencing providers offer *complementary* services, rather than services that compete with those offered by the Postal Service for mailing customers. *Id.* at 2. It explains that postage

¹⁷ See Response to CHIR No. 2, question 12.a.i. (stating that the Postal Service is “not actively evaluating or pursuing additional payment options” for USPS Connect Local Mail beyond Click-N-Ship and the USPS API). *See also* Response to CHIR No. 1, question 5; Docket No. MT2022-1, Response of the United States Postal Service to Commission Information Request No. 1, November 30, 2021, questions 1.d., 3.

¹⁸ *See, e.g.,* Pitney Bowes Comments at 7-8; PostCom Comments at 3; PSA Comments at 2.

evidencing providers instead “facilitate payment for a postal service” and are therefore not covered by the protections of section 404a.¹⁹

Pitney Bowes rejects this contention, stating that neither the plain language of section 404a nor its legislative history suggest that it protects only entities that compete with the Postal Service for mailing customers—“downstream” delivery service providers—rather than entities, like postage evidencing providers, who compete with the Postal Service to provide “upstream” services to the Postal Service’s mailing customers. Pitney Bowes Surreply at 1-5. Pitney Bowes also points out that such a construction would nullify the statutory provision:

With respect to market dominant postal products, like USPS Connect Local Mail, the Postal Service enjoys a statutory monopoly over the downstream delivery function. The argument that section 404a preempts any claim of competitive foreclosure by firms offering “upstream” services because those services are complementary of downstream delivery services, turns the statutory provision on its head by allowing the Postal Service to abuse its monopoly position because it is a monopolist.

Id. at 3.

¹⁹ *Id.* at 3-4. In support, the Postal Service cites to Order No. 5550 in which the Commission stated that “financial benefits of all forms of personalized postage accrue to the Postal Service for any postage offering” and “the Postal Service cannot create an unfair competitive advantage against itself.” *Id.* at 3 (citing Docket No. MC2020-126, Order Approving Removal of Customized Postage from Mail Classification Schedule, June 16, 2020, at 5 (Order No. 5550)). In that case, the Commission analyzed whether removing a personalized postage program—through which select vendors sold customized postage to mailers—violated section 404a. Order No. 5550 at 5-6. One of the commenters argued that the removal of this program would create an unfair competitive advantage for the Postal Service’s own custom stamp programs. *Id.* at 3-4. See also Docket No. MC2020-126, Submission of Stamps.com’s Comments, May 18, 2020, at 9-10. The Commission determined, in relevant part, that the removal of the customized postage programs would not create an unfair competitive advantage because additional personalization options were available from the private sector. Order No. 5550 at 6. It explained that “[t]o conclude otherwise would lead to an illogical result where any postal product offered through a third party licensee could never be removed from the MCS, regardless of the alternate offerings available to the public.” *Id.* at 5-6. At this juncture, the Postal Service has not persuasively demonstrated that Order No. 5550 (which involved the elimination of an offering due to declining demand and revenue while simultaneously becoming a source of customer complaints and legal disputes) would apply to the conversion of USPS Connect Local Mail from an experimental to a permanent offering.

The Commission agrees with Pitney Bowes that there is nothing in the plain language of section 404a, or in the legislative history presented by the parties, that would restrict the scope of section 404a to downstream services. Likewise, the Commission agrees that such a construction would largely nullify the effect of section 404a because the Postal Service holds a monopoly over the downstream delivery functions for Market Dominant products. As such, the Commission finds that, at least at this juncture, Pitney Bowes and the other commenters appear to have met their burden to show that the Revised Request might preclude competition or establish the terms of competition by restricting payment options for USPS Connect Local Mail to only those offered by the Postal Service. As explained below, the Postal Service, as the proponent of the conversion request, has failed to meaningfully rebut these issues at this time.

This analysis is constrained by the facts and argument currently before the Commission. The Commission reserves the right to revisit, with the benefit of fuller briefing, the issue of whether USPS Connect Local Mail precludes or establishes the terms of competition.

3. The Postal Service has failed to demonstrate that instituting USPS Connect Local Mail does not create an unfair competitive advantage for itself.

Because the commenters have raised issues regarding whether the payment options for USPS Connect Local Mail preclude competition, the burden shifts to the Postal Service to demonstrate that its proposed payment method does not create an unfair competitive advantage for itself. See Order No. 1739 at 8. In this regard, the Postal Service asserts that because, in the Postal Service's considered business judgment, Click-N-Ship and the USPS API are the only ways to provide a good-quality customer experience for users of USPS Connect Local Mail, the competitive advantage gained by the Postal Service is not "unfair" under section 404a. See Reply Comments at 4-6. In support, the Postal Service states that its own postage evidencing services are necessary because they "inform customers of the drop-off location they need to use

to receive the USPS Connect Local Mail rate (since customers are responsible for dropping off each piece at the designated entry unit serving the destination address)” and “other payment options simply do not have the functionality required for this product to achieve its intended objectives.” *Id.* at 4-5.

Pitney Bowes responds that the Postal Service’s business judgment in this sphere is not unlimited, but rather is necessarily constrained by section 404a. See Pitney Bowes Surreply at 5. Moreover, it asserts that the Postal Service has provided no evidence that third-party postage evidencing options could not provide satisfactory customer experiences for users of USPS Connect Local Mail and has thus failed to meet its burden to show that its preclusion of these options is not “unfair.” See *id.* at 5-6.

On this argument, PSA notes that the Postal Service has not satisfactorily used the market test to alleviate section 404a concerns by working with postage evidencing suppliers to expand payment options for USPS Connect Local Mail. PSA Comments at 3; see *also* Pitney Bowes Comments at 5-6. PSA asserts that “[a]dditional time should be spent working with private firms offering complementary postage evidencing services before this product is approved” and further explains that “[p]reliminary discussions with PSA member companies that offer complementary postage evidencing solutions confirm that programming / technical issues regarding program eligibility would not be difficult to address if given the chance to work with the Postal Service.” PSA Comments at 3.

The Commission generally agrees with the commenters. Although the Postal Service repeatedly relies upon its own business judgment on the issue of postage options, it has not provided any actual *evidence* that offering postage evidencing services through private entities would not be feasible. Nor has the Postal Service demonstrated any logical reason that third-party postage evidencing providers could not “inform customers of the drop-off location they need to use,” which the Postal Service identifies as a major barrier to offering other payment options. Further, notwithstanding the Postal Service’s earlier representation that it would consider broadening payment

options if the market test proved successful,²⁰ the Postal Service has not identified any plans to explore third-party payment options either during the USPS Connect Local Mail market test or upon authorization to establish a permanent product. See Response to CHIR No. 2, question 12. In the absence of such evidence, the Commission finds that the Postal Service has failed to meet its burden of showing that any competitive advantage to the Postal Service gained by limiting payment options is not “unfair” within the meaning of section 404a.

B. The Revised Request is premature.

In addition to the section 404a analysis provided above, the Commission notes a number of cost, operational, and pricing uncertainties that could be ameliorated, or at the least further investigated, should the Postal Service determine to refile its request that USPS Connect Local Mail become a permanent offering. Consistent with 39 U.S.C. § 3641, the Postal Service has considerable latitude with respect to its experimental offerings, subject to the safeguards inherent in the market test process—the limited duration and revenue, the reporting requirements, the requirement that the Postal Service provide advance notice of any material change, evaluation as a “continued offering,” and reevaluation should the Postal Service wish to extend the test or convert the test to a permanent offering. See Order No. 6080 at 13, 15. Experimental offerings may raise novel and/or controversial issues. The Commission expects that a future refiling of a conversion request by the Postal Service will address the following four topics in a meaningful fashion, based on lessons learned during the market test period.

²⁰ Docket No. MT2022-1, Response of the United States Postal Service to Chairman’s Information Request No. 2, December 14, 2021, question 4.c. In its Revised Request, the Postal Service confirms that it considers the market test “successful.” Revised Request at 2. In approving the market test, the Commission specifically noted that the Postal Service’s initial testing of limited payment options was within its operational discretion for an *experimental* product; at the same time, the Commission “encourage[d] the Postal Service to use the market test period to experiment with the operational requirements, standards, and processing so as to broaden the reach of the test over time and to facilitate the future provision of a successful non-experimental offering.” Order No. 6080 at 16-17.

First, as part of its Revised Request, the Postal Service submitted just three quarters of data from the early rollout of the experimental product, much of it covering only a limited geographic area. See Revised Request, Attachment B. Such an incomplete data set does not provide the Commission sufficient information to make a reasonably certain determination regarding costs, product performance, volume trends, or seasonality for USPS Connect Local Mail. Indeed, it appears likely that the Postal Service itself lacks sufficient data to make sound predictions in these areas. For example, the Postal Service projected USPS Connect Local Mail to have a minimum volume of 3,711 pieces for October 2022 and 4,703 pieces for November 2022.²¹ Instead, actual volume was merely 108 and 1,372 pieces, respectively. See Response to CHIR No. 2, question 9.b.i. Further market testing could allow both the Commission and the Postal Service to gain a better understanding of product projections.

Second, the data that do exist suggest tenuous financial stability for the offering. USPS Connect Local Mail had revenues of \$52,023.25 over the three reporting quarters. See Revised Request, Attachment B. On the other hand, product-specific costs associated with the development of the market test total \$577,837 during the same period. Revised Request at 5-6. While it is not required for revenue from a market test to cover such start-up costs, the Commission has specifically stated that “in requests to make an experimental product permanent, a quantification of start-up costs is necessary for the Commission to evaluate whether a competitive product covers its attributable costs and *whether a market dominant product assures adequate revenues, including retained earnings, to maintain financial stability.*”²² USPS Connect Local Mail does not yet seem to have adequate revenues to maintain financial stability and, given the uncertainty of the offering’s potential growth and performance, it is unclear when it might.

²¹ See Response to CHIR No. 1, question 3; *id.* Excel file “ChIR 1, Q3 - CLM Forecast Model.xlsx,” tab “Assumptions and Estimates,” columns C and D, row 44.

²² Docket No. RM2013-5, Order Adopting Final Rules for Market Tests of Experimental Products, August 28, 2014, at 31 (Order No. 2173) (emphasis added).

Third, the Postal Service's plan to aggregate much of the carrier base into new sort and delivery centers introduces further uncertainty, as that plan will redefine which facilities are considered destination delivery units (DDUs). Considering that this offering is based on local delivery from a DDU, such changes will have a significant impact on this offering. For example, reassignment of a DDU as a sort and delivery center will impact the physical location where a customer drops off an item for delivery as well as the service area of the offering. In the Postal Service's words, however, "[t]he introduction of Sort and Delivery Centers (S&DCs) is in early stages, and the Postal Service intends to study and learn more from experience in order to determine the best practices to be employed in future roll outs. Consequently, operational details related to S&DCs are subject to change." See Response to CHIR No. 2, question 1. It may be worthwhile to learn how such changes will impact customer demand for this offering before it becomes a permanent product. Continuing to examine USPS Connect Local Mail experimentally via the market test would allow such issues to be tested in a more meaningful way.

Fourth, the Postal Service priced USPS Connect Local Mail at a flat rate of \$2.95—what it refers to as “an appropriate price point relative to other USPS Connect offerings, namely the USPS Connect Local package product.” See *id.* question 2.a. However, the Postal Service has not tested different pricing options, nor has the Postal Service changed the price to keep up with rising costs. In fact, the Postal Service states that it “did not feel that market research and/or testing with alternative prices was necessary” and that, since the market test was “well received,” no other prices were ever tested. *Id.* questions 2.b., 2.d. While there is no requirement that the Postal Service must evaluate several different prices, the Commission has encouraged the Postal Service in the past “to experiment with the market test variables to utilize the data collecting opportunities available in future market tests,” particularly when it comes

to price.²³ After all, even if the existing price could be characterized as “well received”—a conclusion that is not necessarily warranted by the scant available data—it is impossible to say, without price testing, whether a higher price point might also be sufficiently well received or whether a lower price point might be even better received. Evaluation of customer response to different price points would seem to be all the more warranted in light of the Postal Service’s prior representations that it “lack[s] visibility into competitors’ pricing.” Docket No. MT2022-1, Response to CHIR No. 1, questions 2.c.-2.d. As it currently stands, there are no data to assess the appropriate pricing of USPS Connect Local Mail or to determine the market responses to different price alternatives.

IV. CONCLUSION

The Commission finds that the commenters have raised meaningful issues suggesting that section 404a might be violated if the Postal Service converted USPS Connect Local Mail to a permanent product in the manner proposed in the Revised Request (*i.e.*, prohibiting third-party postal evidencing options). By its decision, the Commission *does not* intend to foreclose future argument on the part of the Postal Service that a modified request to convert USPS Connect Local Mail to a permanent price category complies with section 404a. This dismissal without prejudice does not preclude any party from relitigating the merits of the various claims and arguments already on the record. The Commission only finds that, based on the Revised Request and the rest of the evidence and argument currently in Docket No. MC2023-12, it cannot approve the Postal Service’s request to convert the experimental product USPS Connect Local Mail into a permanent offering on the MCS at this time. Therefore, the Commission must dismiss the Revised Request without prejudice for the Postal Service to refile its request once it has resolved the issues related to section 404a. To this end,

²³ See Docket No. MC2022-40, Order Approving Addition of Extended Mail Forwarding to the Mail Classification Schedule, April 8, 2022, at 10 (Order No. 6147).

and in order to allow the Postal Service to investigate the potential cost, operational, and pricing issues addressed above, the Commission encourages the Postal Service to refrain from refiling until at least after the filing of the FY 2023 Quarter 2 market test report, due May 10, 2023, in Docket No. MT2022-1.

The Commission also notes that the market test in Docket No. MT2022-1 remains authorized through January 8, 2024, and there appears to be no reason to indicate that a dismissal without prejudice would lead to any interruption in service (or, indeed, would not lead to a more well-formed proposal for offering USPS Connect Local Mail on a permanent basis).

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission cannot approve the USPS Connect Local Mail product as a permanent product offering based upon the record before it.
2. The Commission hereby dismisses, without prejudice, the United States Postal Service Revised Request to Convert USPS Connect Local Mail to a Permanent Offering, filed November 9, 2022.

By the Commission.

Erica A. Barker
Secretary